

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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TY:

Legend

Taxpayer =

FC =

Country B =

Z =

Accounting Firm =

Accountant =

Law Firm X =

Law Firm Y =

Year 1 =

Year 2 =

Year 3 =

Dear :

This is in response to a letter dated January 8, 2009 submitted by your authorized representative that requested the consent of the Commissioner of the Internal Revenue Service ("Commissioner") for Taxpayer to make a retroactive qualified electing fund ("QEF") election under section 1295(b) of the Internal Revenue Code ("Code") and Treas. Reg. §1.1295-3(f) with respect to Taxpayer's investment in FC.

The ruling contained in this letter is based upon information and representations submitted on behalf of Taxpayer by her authorized representatives, and accompanied

by a penalties of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of this request for ruling, such material is subject to verification on examination. The information submitted in the request is substantially as set forth below.

FACTS

Taxpayer is a resident of Country B who acquired U.S. citizenship in Year 1. In Year 2, Taxpayer acquired Z shares of FC, a corporation organized under the laws of Country B.

During Year 2-Year 3, Taxpayer's tax returns were prepared by Accounting Firm, a global accounting firm with offices around the world, including Country B and the United States, and accountants licensed to render tax advice on the laws of Country B, the United States and other jurisdictions. Accountant, a chartered accountant licensed to provide advice with respect to the taxes of Country B, was the partner at Accounting Firm in charge of the preparation of Taxpayer's tax returns for Year 2-Year 3.

Accountant and Accounting Firm also have been responsible for the preparation of tax returns for FC and, thus, were familiar with its income, assets and operations for Year 2-Year 3. For the preparation of Taxpayer's U.S. income tax returns, Accountant relied on tax professionals within Accounting Firm who focused on U.S. tax matters. Accountant, as the partner at Accounting Firm in charge of Taxpayer's returns, however, was responsible for ensuring that Taxpayer's required tax returns, including Taxpayer's U.S. federal income tax returns, were accurate and for informing Taxpayer of applicable elections and filing requirements. As tax advisor to both Taxpayer and FC, Accountant and Accounting Firm had access to all facts, circumstances and documents necessary to evaluate the potential U.S. consequences to a U.S. taxpayer owning shares of FC. However, the status of FC as a passive foreign investment company ("PFIC") within the meaning of Code section 1297 was not raised as an issue in the context of Taxpayer's Year 2 U.S. tax return or the return for any subsequent tax year by U.S. tax specialists preparing Taxpayer's U.S. returns at Accounting Firm. Thus, Accountant did not raise the status of FC as a PFIC or the availability of a QEF election with Taxpayer.

Taxpayer has no formal training with respect to tax matters under Country B or U.S. law or international tax matters. Therefore, Taxpayer relied on the resources of Accounting Firm and Accountant for the accurate preparation of her U.S. tax returns and for guidance regarding any elections or filings that might apply.

The potential PFIC status of FC was first raised as an issue by Law Firm X in Year 3 as part of a review of Taxpayer's investments. A decision was made to consult Law Firm Y, a U.S. based law firm, with respect to possible U.S. income tax issues. Law Firm Y determined there was a strong risk that FC was a PFIC during Year 2-Year 3. It was decided that a request for consent to make a retroactive QEF election with respect to FC should be made on behalf of Taxpayer that would apply to Year 2 and subsequent years.

Taxpayer submitted affidavits, under penalties of perjury, describing the events that led to the failure to make the QEF election by the election due date, including the role of Accountant and Accounting Firm. Taxpayer represents that, as of the date of this request for ruling, the PFIC status of FC has not been raised by the Internal Revenue Service on audit for any of the taxable years at issue.

RULING REQUESTED

Taxpayer requests the consent of the Commissioner to make a retroactive QEF election with respect to FC for Year 2 under Treas. Reg. §1.1295-3(f).

LAW

Code Section 1295(a) provides that a PFIC will be treated as a QEF with respect to a taxpayer if (1) an election by the taxpayer under Code section 1295(b) applies to such PFIC for the taxable year; and (2) the PFIC complies with such requirements as the Secretary may prescribe for purposes of determining the ordinary earnings and net capital gains of such company.

Under Code section 1295(b)(2), a QEF election may be made for any taxable year at any time on or before the due date (determined with regard to extensions) for filing the return for such taxable year. To the extent provided in regulations, such an election may be made after such due date if the taxpayer failed to make an election by the due date because the taxpayer reasonably believed the company was not a PFIC.

Under Treas. Reg. §1.1295-3(f), a shareholder may request the consent of the Commissioner to make a retroactive QEF election for a taxable year if:

1. the shareholder reasonably relied on a qualified tax professional, within the meaning of Treas. Reg. §1.1295-3(f)(2);
2. granting consent will not prejudice the interests of the United States government, as provided in Treas. Reg. §1.1295-3(f)(3);
3. the request is made before a representative of the Internal Revenue Service raises upon audit the PFIC status of the corporation for any taxable year of the shareholder; and
4. the shareholder satisfies the procedural requirements of Treas. Reg. §1.1295-3(f)(4).

The procedural requirements include filing a request for consent to make a retroactive election with, and submitting a user fee to, the Office of the Associate Chief Counsel (International). Treas. Reg. §1.1295-3(f)(4)(i). Additionally, affidavits signed under penalties of perjury must be submitted that describe:

1. the events that led to the failure to make a QEF election by the election due date;
2. the discovery of such failure;
3. the engagement and responsibilities of the qualified tax professional; and
4. the extent to which the shareholder relied on such professional.

Treas. Reg. §§1.1295-3(f)(4)(ii) and (iii).

CONCLUSION

Based on the information submitted and representations made with Taxpayer's ruling request, we conclude that Taxpayer has satisfied Treas. Reg. §1.1295-3(f).

Accordingly, consent is granted to Taxpayer to make a retroactive QEF election with respect to FC for Year 2, provided that Taxpayer complies with the rules under Treas. Reg. §1.1295-3(g) regarding the time and manner for making the retroactive QEF election.

Except as specifically set forth above, no opinion is expressed or implied concerning the U.S. federal tax consequences of the facts described above under any other provision of the Code.

This private letter ruling is directed only to the taxpayer who requested it. Code section 6110(k)(3) provides that it may not be used or cited as precedent.

A copy of this letter ruling must be attached to any federal income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Ethan A. Atticks
Senior Technical Reviewer, Branch 2
(International)

cc: